

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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CC:FIP:B03 – PLR-113420-11

Date:

August 15, 2011

RE:

EIN:

LEGEND:

Trust =

Advisor =

Firm =

State X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Dear :

This responds to a letter dated March 29, 2011, that was submitted on behalf of Trust requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(c) of the Internal Revenue Code to treat Trust as a real estate investment trust (REIT) effective as of the tax year ending on Date 4.

FACTS

Trust was formed as an externally-managed State X corporation on Date 1. Trust acquires timberlands and has operated as a C corporation from the tax years ending on Date 2 through Date 3. Trust represents that Trust intended to elect REIT status beginning with the tax year ending on Date 4.

Trust contracted with an outside company (Advisor) to manage the daily affairs and operations of Trust. Trust retained a public accounting firm (Firm) to prepare Trust's state and federal income tax returns and any necessary extension requests. Firm timely filed a request for an extension of time to file Trust's Form 1120-REIT for the year ending on Date 4.

On Date 5, Firm delivered to Trust the Form 1120-REIT for the year ending on Date 4. No officers of Trust were available to sign the return. At the request of an officer of Trust, an officer of Advisor signed and filed the Form 1120-REIT on Date 5, which was before the extended due date for filing Trust's return for the tax year ending on Date 4.

On Date 6, after the extended due date for filing Trust's return, Trust became aware that because it had not been signed by an officer of Trust, the Form 1120-REIT was not properly signed and there was a possibility that Trust had not properly made an election to be treated as a REIT. Trust has represented that it intended to elect REIT status beginning with the tax year ending on Date 4 and has operated in a manner to qualify as a REIT pursuant to § 856 of the Code.

On Date 7, Firm and Trust's legal counsel advised Trust to voluntarily re-file its tax return with a correct signature and to submit a request for a private letter ruling seeking relief under § 301.9100-3 of the Regulations that the election of REIT status Trust made on its Form 1120-REIT for the tax year ending on Date 4, will be considered as timely made. Trust's Form 1120-REIT for the year ending on Date 4 was re-filed on Date 8. Trust has represented that it did not use hindsight in requesting relief.

Trust makes the following additional representations:

1. The request for relief was filed by Trust before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Trust having a lower tax liability in the aggregate for all years to which the regulatory election applies than Trust would have had if the election had been timely made (taking into account the time value of money).
3. Trust did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time Trust requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Trust did not choose to not file the election.

LAW AND ANALYSIS

Section 856(c)(1) of the Code provides that a corporation, trust, or association shall not be considered a REIT for any taxable year unless it files with its return for the taxable year, an election to be a REIT or has made such election for a previous taxable year, and such election has not been terminated or revoked. Pursuant to § 1.856-2(b), the election shall be made by computing taxable income as a REIT in its return for the first taxable year for which it desires the election to apply.

Section 301.9100-1(c) of the Income Tax Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Internal Revenue Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies.

than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based on the information submitted and representations made, we conclude that Trust has satisfied the requirements for granting a reasonable extension of time to elect under § 856(c) of the Code to be treated as a REIT beginning with the tax year ending on Date 4. Accordingly, the election of REIT status Trust made on the Form 1120-REIT that was filed on Date 8, for the tax year ending on Date 2, will be considered as timely made.

No opinion is expressed with regard to whether the tax liability of Trust is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Trust's election to be treated as a REIT for the tax year ending on Date 4. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Trust otherwise qualifies as a REIT under subchapter M of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Alice M. Bennett
Chief, Branch 3
Office of Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes

cc: